

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LEONARD RICALLS,
Plaintiff,
v.
P. ANDREWS,
Defendant.

No. 2:23-cv-00771-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has paid the filing fee.

On June 12, 2023, the court screened plaintiff's complaint pursuant to 28 U.S.C. § 1915A and dismissed it with leave to amend. ECF No. 4. Since then, plaintiff has filed motions for leave to file an amended complaint, appointment of counsel, and to proceed in forma pauperis. ECF Nos. 5-7.

As noted, the court has already given plaintiff leave to file an amended complaint and he has paid the filing fee. Accordingly, plaintiff's motions for leave to file an amended complaint and to proceed in forma pauperis are denied as unnecessary.

As for the motion for appointment of counsel, the court notes that district courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may

1 request an attorney to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1);
2 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332,
3 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court
4 must consider the likelihood of success on the merits as well as the ability of the plaintiff to
5 articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer v.*
6 *Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there
7 are no exceptional circumstances in this case.

8 Accordingly, it is hereby ORDERED that:

- 9 1. Plaintiff’s June 29, 2023 motion for leave to file an amended complaint (ECF No. 6) is
10 DENIED as unnecessary;
11 2. Plaintiff’s June 29, 2023 motion to proceed in forma pauperis (ECF No. 7) is DENIED
12 as unnecessary;
13 3. Plaintiff’s June 29, 2023 motion for appointment of counsel (ECF No. 5) is DENIED
14 without prejudice; and
15 4. Plaintiff shall file an amended complaint in accordance with the June 12, 2023
16 screening order within 30 days of service of this order. Failure to do so may result in
17 dismissal of this action.

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19 Dated: September 1, 2023.
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21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
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